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| **Commonwealth Edison Company** | : | |
| | : | **ICC Docket No. 10-0467** |
| **Proposed general increase in electric rates** | : | |
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# REPLY BRIEF

**OF THE COALITION TO**

**REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER**

# REACT

**COMPRISED OF:**

**A. FINKL & SONS, CO.**
**AUX SABLE LIQUID PRODUCTS, LP**
**THE CITY OF CHICAGO**
**COMMERCE ENERGY, INC.**
**FLINT HILLS RESOURCES, LP**
**FUTUREMARK PAPER COMPANY**
**INTEGRYS ENERGY SERVICES, INC.**
**INTERSTATE GAS SUPPLY OF ILLINOIS, INC.**
**THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO**
**PDV MIDWEST REFINING LLC**
**UNITED AIRLINES, INC.**
**WELLS MANUFACTURING, INC.**

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**REPLY BRIEF OF THE COALITION**
**TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER**

The Coalition to Request Equitable Allocation of Costs Together ("REACT"),[1] by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission ("Commission") (83 Ill. Admin. Code 200.800), respectfully submits its Reply Brief in the instant proceeding addressing the proposed general increase in electric rates of Commonwealth Edison Company ("ComEd").

## I.

## INTRODUCTION[2]

ComEd just does not seemed focused on the importance of complying with prior Commission Orders relating to issues of cost allocation.

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[1] The customer members of REACT currently are: A. Finkl & Sons Company; Aux Sable Liquid Products, LP; the City of Chicago; Flint Hills Resources, LP; FutureMark Paper Company (formerly known as the Alsip Paper Condominium Association); the Metropolitan Water Reclamation District of Greater Chicago; PDV Midwest Refining LLC; United Airlines, Inc.; and Wells Manufacturing Company. All of these REACT customer members participated in the 2007 ComEd Rate Case (ICC Docket No. 07-0566) and the 2008 ComEd Special Investigation Proceeding (ICC Docket No. 08-0532) as REACT members. REACT's supplier members currently are Commerce Energy, Inc.; Integrys Energy Services, Inc.; and Interstate Gas Supply of Illinois, Inc. The positions stated herein do not necessarily represent the positions of any individual REACT member.

[2] This Reply Brief follows the "Common Outline" of issues, as does REACT's Draft Proposed Order which is attached hereto as Attachment A.

Although perhaps it is understandable that ComEd's primary focus is upon its own requests to increase its overall rates by hundreds of millions of dollars annually, its failure to abide by the terms of the Commission's prior Orders regarding cost allocation has resulted in ComEd again seeking from its largest individual customers massive, unjustified million dollar-plus annual increases that would violate the cost causation principles set forth in the Public Utilities Act ("the Act") that repeatedly have been endorsed by the Commission.

The Initial Briefs of Staff, REACT, Metra, CTA and IIEC all cited Commission Orders and extensive record evidence that establish that although the Commission repeatedly has spoken on issues of cost allocation, ComEd apparently has not been listening. Those Initial Briefs explain in detail ComEd's non-compliance, ranging from failing to satisfy explicit Commission directives to ignoring clear guidance and policy concerns. ComEd's Initial Brief simply confirms ComEd's intransigence -- ComEd persists in ignoring the full requirements of Commission Orders and ignoring the impact of record evidence that undermines ComEd's arguments. Indeed, ComEd does not even mention the Commission's Order in the Special Investigation Proceeding until page 110 of its Initial Brief. REACT respectfully requests that the Commission insist on nothing less than full compliance with its Orders and clear statements.

The Initial Briefs confirm that feasible and practical solutions exist to correct ComEd's misallocations of costs. In its Initial Brief, REACT set out three key revenue-neutral changes that the Commission could make to ComEd's proposed ECOSS and Rate Design that would have zero impact upon ComEd's bottom line, but that would make ComEd's rates reflective of cost causation as required by the Act. (*See* 220 ILCS 5/16-108(c); *see also* REACT Initial Brief at 8.) Nothing in ComEd's Initial Brief justifies ComEd's continuing misallocations, and there is considerable support from Commission Staff and other Intervenors regarding REACT's recommendations:

- **First, ComEd should be required to allocate the cost of the distribution system assets serving ComEd's over-10 MW customer classes in proportion to those class's actual use of those distribution system assets**. Staff, IIEC, Metra, and CTA provide compelling arguments bolstering REACT's explanation of how ComEd's proposed ECOSS simply does not reflect cost causation**.** IIEC, Metra, and CTA explain why ComEd's flawed ECOSSs do not reflect the costs of serving ComEd's largest customers. In addition, IIEC persuasively explains why ComEd should not be automatically entitled to rate increases toward the ECOSS-based rate in light of the Commission's intended use of the "mitigation" plan. Finally, IIEC and Staff set out in full detail the failure of ComEd to fully comply with the Special Investigation Order.

- **Second, the Commission should compel ComEd to allocate all of ComEd's Customer Care Costs based on an embedded cost of service study, adjusted to reflect how those costs are caused**. ComEd admits that costs should be assigned to their causers, but then fails to apply this principal. Staff provides a forceful summary of why ComEd should include and allocate *all* costs related to customer care.

- **Third, the Commission should retain the existing rate design to collect taxes, and require ComEd to annually update its distribution loss factor.** IIEC presents a full history of the Illinois Electricity Distribution Tax, and shows that assigning the tax on a pure per kWh basis does not reflect cost causation. With regard to distribution losses, Staff highlights the lack of supervision over ComEd and the need for more accurate Distribution Loss Factors.

Implementation of these steps would lead to cost based rates in compliance with the Act and the Commission's prior Orders. ComEd's Initial Brief candidly admitted that REACT's proposed changes are all revenue-neutral. (*See* ComEd Initial Brief at 130.) This admission, considered together with the evidence demonstrating that ComEd has the technical and operational wherewithal to understand steps to ensure accurate cost allocation, shows that the Commission can and should explicitly order ComEd to take these specific steps to better allocate costs to their causers.

Conversely, failure to implement these steps will perpetuate the Commission-recognized misallocation of costs associated with ComEd's delivery service. That misallocation harms customers, sends inaccurate price signals, is anti-competitive, and is non-compliant with the Act.

The Commission ought not continue to sanction ComEd's non-compliance with the Act and prior Commission Orders, particularly when ComEd is neither harmed by compliance nor unable to comply.

The Commission has issued a series of Orders calling into question the approach ComEd has used to allocate its costs to its over-10 MW customer classes and the way in which ComEd has assigned its Customer Care Costs. Nonetheless, on both of these issues, ComEd attempts to rerun its same approach in this proceeding. REACT respectfully submits that now is the time for the Commission to take steps to achieve cost-based rates for delivery services for ComEd's over-10 MW customer classes and to remove ComEd's supply-related Customer Care Costs from its delivery services rates.

## VII.

## COST OF SERVICE AND ALLOCATION ISSUES

### A. Overview

ComEd only pays lip service to explicit Commission Orders, particularly those that relate to the development of ComEd's ECOSS for its over-10 MW customer classes. ComEd argues that its proposed ECOSS "reasonably allocates embedded distribution and customer costs among the retail delivery service classes." (ComEd Initial Brief at 102.) This characterization rings hollow; ComEd's preferred ECOSS simply cannot "reasonably" allocate costs when:

(1) ComEd's preferred ECOSS fails to account for clear, explicit Commission directives from the Special Investigation Proceeding (as detailed in Section VIII.C.10 *infra*);

(2) ComEd invokes a Commission rule, Part 285.5110, apparently as an asserted "safe harbor" of some sort, despite strong evidence that the current allocators do not reflect actual cost causation for the over-10 MW customers (as detailed in Section VII.C.1.c *infra*) -- while, ironically, failing to comply with explicit Commission Orders; and

(3) ComEd's preferred ECOSS was drafted before ComEd even completed its own *evaluation* of the items the Commission required ComEd to consider in the Commission's Special Investigation Final Order (as detailed in Section VII.C.1.k. *infra*)

REACT does not stand alone in its criticisms of ComEd. Both Staff and IIEC also highlighted ComEd's willful non-compliance with Commission Orders, supplementing and fortifying the compliance issues that REACT identified in its Initial Brief. (*See, e.g.,* Staff Initial Brief at 95-104, 112-114, 147-151; IIEC Initial Brief at 34-40, 43-46, 62-63, 67-68; REACT Initial Brief at 11-17, 59-64, 66-69.)

Furthermore, ComEd still requests that the Commission allow it to allocate only a fraction of what all parties admitted were much more substantial Customer Care Costs, while requesting the Commission use the same methodology that the Commission repeatedly has called into question. (*Compare* ComEd Initial Brief at 126 *with* Staff Initial Brief at 112-114; *See* ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 207-208; ICC Docket No 08-0532, Final Order dated April 21, 2010, at 67-69.)

**B. Uncontested Issues**

Upon review of the other Initial Briefs in this matter, REACT's position regarding uncontested cost of service and cost allocation issues remains unchanged. REACT witness Mr. Fults provided uncontested evidence about the impact ComEd's proposed increases will have on members of the over-10 MW customer classes -- both in terms of percentage increase and bottom-line dollar impact. (*See* REACT Initial Brief at 20-21.) Under ComEd's "unmitigated" ECOSS, the largest over-10 MW customers would be subjected to rate increases of more than **171%** over the cost-based rates established in ComEd's 2005 Rate Case -- with annual dollar impacts exceeding **$3.8 million.** (*See* REACT Ex. 4.0 at 8:165-169.) In addition, REACT identified several fundamental areas of common ground between REACT, ComEd, and Staff on

Customer Care Costs. (*See* REACT Initial Brief at 21.) No party contests those issues in its Initial Brief. REACT stands on the arguments it presented in the corresponding section of its Initial Brief. (*See id.*)

**C. Contested Issues**

**1. Embedded Cost of Service Study Issues**

**a. Class Definitions**

**(ii) Non-Residential Classes**

REACT explained in its Initial Brief that adding primary classes or subclasses will not help fully reflect the goals of the Special Investigation Order or cost causation without an accompanying study of the distribution assets serving the Extra Large Load customer class. (*See* REACT Initial Brief at 22-24.) Upon review of the other Initial Briefs in this matter, REACT's position remains unchanged. REACT stands on the arguments it presented in the corresponding section of its Initial Brief. (*See id.*)

**b. Primary/Secondary Split**

**(i) Appropriate Methodology/Compliance with Docket No. 08-0532 [the Special Investigation Proceeding]**

**(a) Functional Identification of Costs**

In its Initial Brief, REACT described Mr. Terhune's evaluation of ComEd's primary/secondary study of distribution system assets and concluded that the evaluation provided a proof-of-concept for a study of distribution system assets serving the Extra Large Load customer class. (*See* REACT Initial Brief at 24-26.) In an attempt to bolster its two primary/secondary analyses against criticism from Staff and other Intervenors, ComEd states that its two analyses "represent a thorough, judicious effort to differentiate primary and secondary distribution system costs and allocate them consistently to classes of customers who respectively are responsible for the costs." (ComEd Initial Brief at 109.)

While Staff and other Intervenors have pointed out some significant flaws in ComEd's analysis, REACT agrees with the structure of and concept behind ComEd's primary/secondary analysis, and applauds ComEd for apparently recognizing the value of attempting accurate cost allocation that matches the cost of the assets used to provide service with the rates that are charged to the customer classes. Allocation better representing cost causation is exactly what REACT advocates, and ComEd's primary/secondary analysis demonstrates the feasibility of the Commission requiring that the rates charged to the over-10 MW customer classes be based upon a statistically valid sampling survey and analysis of the distribution assets that are used to provide service to those classes. With that backdrop, REACT repeatedly has stated that the lessons and criticisms pointed out by the parties regarding ComEd primary/secondary analysis would be instructive in creating a better, more robust study of distribution assets serving the over-10 MW customer classes. (*See, e.g.,* REACT Initial Brief at 25.) Staff and IIEC both provide instructive comments regarding how that study can and should be improved.[3] (*See, e.g.,* Staff Initial Brief at 94-104, 147-151; IIEC Initial Brief at 34-39, 43-48.**)**

**First, ComEd's primary/secondary study confirms that ComEd is fully capable of conducting a study of the actual distribution system assets serving a class.** As ComEd notes, it had not previously broken down its assets as primary (over 4 kV), secondary (under 4 kV) or shared (common to both), but was able to do so in response to the Commission's mandate in its Special Investigation Order. (*See* ComEd Initial Brief at 107-08.) Although ComEd continues

[3] Criticisms from other parties of REACT's proposed survey and analysis of distribution system assets serving the over-10 MW customer classes are addressed in Section VII.C.1.c.

to dispute that further study of the actual assets used to serve the over-10 MW customer classes would be "useful," this is the same argument that ComEd initially made in resisting performing the primary/secondary split in the first instance. Significantly, ComEd does not dispute its ability to break down costs by voltage or by function, but rather appears to take issue with the Commission's prior determination that such allocations are appropriate. (*Compare* ComEd Initial Brief at 109 (suggesting investigation would not be useful) *with* ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 206 (discussing "explicit policy objective of assigning costs where they belong") and ICC Docket No. 08-0532, Final Order dated September 10, 2008, at 40 (directing ComEd to present "an analysis of which customer groups are served by which system service components").)

**Second, even ComEd's updated (and supposedly fully compliant) primary/secondary study, does not properly functionalize assets**, as explained in detail by IIEC, Staff, and REACT. (IIEC Initial Brief at 43-48.) IIEC points out that simply because a customer class uses assets at a certain voltage does not mean that they use all assets at that voltage. (*Id.* at 43-44.) This conclusion is fully consistent with REACT witness Mr. Terhune's testimony and the REACT Offer of Proof, which detailed the Extra Large Load customer class's minimal use of certain systems that are used to provide service to at least one member of the class. (*See* REACT Initial Brief at 26-31, 42-44.) IIEC used the example of 4 kV assets and primary lines operating below three-phase, which are examples highlighted by the REACT Offer of Proof. (*See id.* at 26-31.)

Staff likewise provides important insights into the way in which an allocation analysis should be performed. For instance, although Staff and ComEd agreed that ComEd could use sampling techniques, Staff correctly pointed out that ComEd's failure to sample more than four circuits -- or show that those circuits were representative of general population of ComEd's 6,400 circuits -- calls ComEd's results into question. (*See* Staff Initial Brief at 102.) REACT agrees that a proper sampling methodology must provide baseline justification for the sample size and sample selection. Staff makes other procedural suggestions (such as the value of direct observation) that similarly should be integrated to enhance future cost allocation studies. (*See* Staff Initial Brief at 97-101, 103-104.)

Thus, the discussion further emphasizes REACT's position that a survey accounting for the assets used to provide service to the over-10 MW customer classes will require ComEd to understand the function of its assets, something ComEd is capable of but did not execute in the present case.

**(ii) Other Primary/Secondary Split Issues**

**(a) 4 kV Asset Allocation**

Both Metra and CTA make arguments similar to those made by REACT about the accurate cost allocation and the problems created by requiring certain customer classes to pay for assets the respective classes do not use. (*See* Metra Initial Brief at 7-10; CTA Initial Brief at 7-13.) REACT differs with CTA about the solution (CTA advocates for total exclusion of the assets, while REACT requests a study of distribution system assets and Metra makes a similar request); however, the fundamental issue of misallocation of costs is identical. The legal principle is also the same: **the Commission should not allow ComEd to force a class of customers to pay for costs which that class of customers did not cause; to do so violates the Act and prior Commission Orders**. (*See* Metra Initial Brief at 8-10; CTA Initial Brief at 7-8; *see also* REACT Initial Brief at 31-41.) Furthermore, REACT, CTA, and Metra all agree that ComEd has the ability to -- and should -- remedy the over-allocation of assets to the respective classes. (*See* Metra Initial Brief at 9-10 (requesting "collaborative study"); CTA Initial Brief at 12-13 (requesting exclusion); *see also* REACT Initial Brief Section VII.C.1.c.)

**c. Investigation of Assets Used To Serve Extra Large Load Customer Class**

Only ComEd directly responded to REACT's proposal that ComEd be required to study the distribution system assets serving the over-10 MW customer classes. REACT and ComEd both agree that ComEd has a statutory obligation to provide cost based rates. (*See, e.g.* ComEd Ex. 14.0R, 4:91-5:104; Tr. 122:1-123:7 (ComEd witness Mr. Guerra), 383:2-384:4 (ComEd witness Dr. Hemphill); REACT Initial Brief at 8.) The difference between REACT and ComEd is the *degree* to which that ComEd must properly assign costs to their causes in order to comply with the Act and Commission Orders.

The Commission has weighed in on the degree to which ComEd must reflect costs in its ECOSS, and it has consistently ordered ComEd to go well beyond the approach that ComEd has chosen to take in the present case. (*See* REACT Initial Brief at 11-14.) In stark contrast to the Commission's previous Orders directing ComEd to present "an analysis of which customer groups are served by which system service components" and expressing "explicit policy objective of assigning costs where they belong," ComEd attempts to minimize its obligation to have cost-based rates. (*See* ICC Docket No. 08-0532, Final Order dated September 10, 2008, at 40; ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 206.) The Commission should prevent ComEd from continuing to rely upon its fundamentally flawed ECOSS and compel ComEd to undertake a study of the distribution system assets serving the over-10 MW customer classes.[4]

[4] For clarity and completeness, REACT responds in this section to Special Investigation Order issues that other parties discussed in Sections VII.C.1.b and VIII.C.10 of their Initial Briefs.

Just as REACT predicted in its Initial Brief, ComEd attempts to hide behind Part 285.5110 requirements to justify the company's inaccurate and incomplete cost allocation contained in its flawed ECOSS. (*Compare* REACT Initial Brief at 36-37 *with* ComEd Initial Brief at 116; Tr. 2143:15-2144:16.) ComEd's argument suggests that satisfying the requirements of Part 285.5110 is *the only* test for determining whether its rates are cost-based. (*See* ComEd Initial Brief at 116.) This argument is not supported by the Act, Part 285 itself, or the Commission's previous Orders.

As an initial matter, although ComEd witness Mr. Alongi originally suggested that ComEd need only abide by Part 285, he properly admitted on cross-examination that ComEd's ECOSS is not only governed by Part 285, but also by the Commission's Orders. (*See* Tr. 2164:11-16.) Those Orders have been highly critical of ComEd's ECOSS as ComEd has sought to apply it to the over-10 MW customer classes.

For example, the Commission noted in the 2007 ComEd Rate Case that:

> In ComEd's most recent previous delivery service case, Docket 05-0597, the ECOSS was not used for setting rates for large customers. In Docket 01-0423, the ECOSS was not used to allocate revenue to the non-residential classes, that received an across the board increase. In Docket 99-0117 classes were defined differently. Intervenors argue, the expanded use of the ECOSS in this case has not been validated by prior Commission approval on the contested issues
>
> As stated above, the Commission finds that the ECOSS fails in several respects to properly allocate significant costs to cost causers and to correctly measure the cost of service to various classes and subclasses.

(ICC Docket No. 07-0566, Final Order dated September 10, 2008, at 212-213.) ComEd's proposed ECOSS fared no better in the 2007 Rate Case, leading the Commission to conclude that there were "substantial deficiencies in specific elements of the ECOSS render it problematic for purposes of rate setting in this docket." (*Id.* at 213; *see also* REACT Initial Brief at 11-14 (setting out Commission criticism of ComEd's ECOSS).) The Commission, through its Orders and clear instructions, has found that mere compliance with Part 285.5110 is insufficient to create a proper ECOSS -- in particular, ComEd's ECOSS approach is not appropriate for its over-10 MW customer classes.

Part 285 is a starting point, in the sense that it sets forth the minimal requirements for the presentation of information that ComEd must provide when it seeks Commission approval for a rate increase. Accordingly, the title of Part 285 itself is "Standard Information Requirements for Public Utilities and Telecommunications Carriers in Filing for an Increase in Rates," reflecting that this Part sets forth just the initial information that is always required of all utilities; it is not intended to somehow preclude the Commission from requiring that a particular utility file additional information. Part 285.5110 itself states: "Each electric and gas utility with $5 million or more in total jurisdictional annual revenues shall submit, **at a minimum**, an embedded cost of service study for each rate increase application based on costs for the proposed test year." (83 Ill. Admin. Code 285.5110 (emphasis added).)

The Commission then has broad discretion to evaluate ComEd's petition for a rate increase to determine not only whether it complies with Part 285, but also (and more importantly) with the Act's requirement for cost-based rates, as well as with other statutory requirements and other requirements embodied in past Commission statements as well as current Commission thinking about rate structure. Part 285 provides a framework to begin a discussion about rates -- nothing in the language of Part 285 or Commission practice suggests that compliance with Part 285 conclusively and irrefutably answers the question of whether the rates ComEd has proposed should be approved by the Commission, without any reference to the Act or past Commission Orders. If ComEd's approach were carried to its logical conclusion, Staff and Intervenors would be limited to arguing in rate cases -- and the Commission would be limited to evaluating -- whether ComEd's ECOSS was technically compliant with Part 285.5110. That simply is not the case, as recently evidenced by the Commission's own Orders in the 2007 ComEd Rate Case and the 2008 Special Investigation Proceeding. (*See* REACT Initial Brief at 11-14 (quoting both Orders).)

ComEd also criticizes REACT witness Mr. Terhune for not having had principal responsibility for constructing an ECOSS and for not having experience with Part 285.5110. (*See* ComEd Initial Brief at 117.) ComEd's point is inapposite. Mr. Terhune never claimed to have designed an ECOSS -- although he did take part in a larger project to put one together -- and the point of his testimony did not rest upon construction of a competing ECOSS. (*See* Tr. 1628:7-10, 1651:14-1653:8.) Rather, Mr. Terhune used his engineering experience and knowledge of the ComEd distribution system -- engineering experience that ComEd never challenged -- to explain to the Commission the ways in which the ECOSS does not reflect cost causation. (*See* REACT Ex. 3.0C, 6.0C.) In other words, Mr. Terhune explained the actual ComEd system from an engineering standpoint, and then explained examples of how ComEd's ECOSS fails to account for that actual engineering system. Mr. Terhune discussed the engineering realities and actual installed capacity data that were well within his personal expertise. (*See* REACT Initial Brief at 26-44; *see also* REACT Offer of Proof.) ComEd's after-the-fact criticism about Mr. Terhune's ECOSS experience amounts to nothing more than a diversion from the relevant and material information that Mr. Terhune provided, which specifically and graphically demonstrates that ComEd's charges to the Extra Large Load customer class are not cost-based.

ComEd likewise attempts to divert from the issue by criticizing the diverse membership of REACT, and asserting that many of the customers in the over-10 MW customer classes are not members of REACT. (*See* ComEd Initial Brief at 116-117.) Unfortunately, in response to REACT's data request, ComEd refused to identify the members of those classes, impairing REACT's ability to contact those customers directly. (*See* ComEd Response to REACT Data Request 2.14 and 2.15 attached to REACT's Verified Motion to Compel Commonwealth Edison Company's Responses to Certain of REACT's Second, Third, Fourth, and Fifth Sets of Data Requests, Exs. D and E.) Of course, ComEd *does* know who those customers are, and presumably has contacted them to solicit their support for ComEd's position in this proceeding. While it is not possible to know the position of customers who are not involved in this case, the Commission should note that 100% of the customers in the over-10 MW customer classes who are involved in this case have been extremely critical of ComEd's proposed ECOSS and cost allocation methodology.

Next, ComEd asserts that a study of the assets used to provide service to the over-10 MW customer classes would result in rates based upon inaccurate information, because ComEd's system "is continuously being reconfigured and upgraded to meet ever-changing customer needs . . . ." (ComEd Initial Brief at 111.) Of course, the same criticism is equally applicable to ComEd's proposed primary/secondary split, which ComEd now refers to as being "thorough" and "judicious" (ComEd Initial Brief at 109), as well as any one of ComEd's ECOSSs, or any other cost of service study. Of course,, unlike ComEd's ECOSSs, REACT's approach would have the Commission look beyond ComEd's accounting records for the over-10 MW customer classes, and instead base those rates upon the system assets that are actually used to provide service to those customer classes.

Finally, ComEd attempts to resurrect the myth that REACT now seeks individualized cost of service studies for the members of the Extra Large Load customer class. Aside from specifically and clearly disclaiming this approach both in testimony and in briefing, REACT's proposed study would involve sampling and extrapolation, rather than a "nose count" of individual assets. (*See* REACT Initial Brief Section at 38-41, REACT Ex. 6.0C at 33:762-34:797.) In response to ComEd's allegation in pre-filed testimony that Mr. Terhune was advocating individualized cost of service studies, Mr. Terhune responded:

> I made no such recommendation in my direct testimony and I make no such recommendation in this testimony. What I *do* recommend is that the Commission ensure that ComEd's rates are actually cost based. Determining if rates are cost based necessitates understanding what costs underlie the rates -- that is, the cost and related revenue requirements of the assets that serve a given rate *class*.

(REACT Ex. 6.0C at 33:768-772 (emphasis in original).) As REACT noted in its Initial Brief:

> REACT witness Mr. Terhune testified that the sampling techniques, observation, assumptions, and overall process used by ComEd to perform its primary/secondary split analysis form a the solid basis for implementation of an improved methodology to support REACT's proposed study of the distribution system assets serving the over-10 MW customer classes.

(REACT Initial Brief at 39.)

Thus, REACT has advocated that the cost allocators should be adjusted class-wide. As pointed out in REACT's Initial Brief, Mr. Terhune's pre-filed testimony as well as the Offer of Proof relating to Mr. Terhune's analysis of information provided by ComEd during the evidentiary hearing demonstrate that ComEd's current allocators applied to USOA accounts do not reflect the cost causation of the over-10 MW customer classes. In order to ensure that the adjustment assigns no more -- but also no less -- than the costs caused by those classes of customers, REACT advocates a study to find the cost basis that the Act requires, rather than simply excluding certain assets from being assigned to those classes altogether. (REACT Initial Brief at 31-41.) REACT also notes that even in the present rate case, ComEd has adjusted allocators to reflect arguments about distribution system realities that it and other parties identified; adjusting allocators in an ECOSS to reflect a more refined understanding of the distribution system assets serving classes of customers would be fully consistent with REACT's recommended approach. (*See, e.g.*, ComEd Ex. 50.0 at 5:77-96; ComEd Ex. 74.0 at 2:35-48; CG Initial Brief at 7 (discussing changes to NCP-SEC in Preferred Exemplar ECOSS).)

The Commission should dismiss out of hand ComEd's attempt to strip the Commission of its clear authority to evaluate ComEd's ECOSS beyond its mere compliance with Part 285.5110. REACT respectfully requests that the Commission, consistent with both the requirements of the Act, as well as the Commission's Orders requiring a primary/secondary study and emphasizing the importance of accurately reflecting cost causation, require ComEd to undertake a study of the distribution system assets serving the over-10 MW customer classes, consistent with REACT's recommendations.

**d. NCP vs. CP**

Consistent with REACT's fundamental guiding principle that costs should be allocated to ComEd's customer classes in proportion to each class's role in causing those costs, REACT's primary position continues to be that the Commission should direct ComEd to undertake a study to accurately determine the delivery services facilities actually used by the over-10 MW customer classes. In the absence of that study, to the extent that the Commission believes that some rate increase for the over-10 MW customer classes is appropriate in this proceeding, that rate increase should be limited to, at most, a system average increase.

To the extent that the Commission decides to approve a rate increase beyond the system average pending completion of the suggest study of delivery services facilities used by the over-10 MW customer classes, one of the allocation questions is whether and how to use the non-coincident peak ("NCP") and/or coincident peak ("CP") allocators. In its Initial Brief, REACT explained that the allocations most representative of cost allocation for the over-10 MW customer classes were (1) NCP for Standard Service assets for those classes, and (2) ComEd's proposed NCP-SEC allocation of zero for certain secondary distribution system assets. (*See* REACT Initial Brief at 41-42.) REACT maintains this position as it relates to the over-10 MW customer classes (again, only to the extent that the Commission believes that allocations resulting in rates in excess of a system average increase are under consideration). REACT has analyzed the arguments in other Initial Briefs, and REACT understands that other Initial Briefs suggest allocations that may best reflect cost causation for customer classes other than the over-10 MW customer classes, depending on the particular collections of assets thought to be used to serve those other classes. REACT further understands that the restrictive system of applying a simple allocator such as NCP or CP to a diverse USOA account -- such as those containing primary assets -- will simply not reflect cost causation for certain classes. For example, REACT understands that the City of Chicago advocates the use of CP to allocate costs, perhaps in part because of the costs caused by the Street Lighting class. (*See* City of Chicago Initial Brief at 7-12.) REACT has no objection to that approach for the Street Lighting customer class (or any other class) to the extent that based on current information that approach best approximates an allocation based on facilities used to serve that class. That is, because there is not sufficient evidence at this stage to create modified allocators that reflect the different cost causation for different classes, REACT does not take a position as to whether NCP or CP should apply to all USOA accounts containing primary assets.

**e. Allocation Of Primary Lines And Substations**

REACT's position with regard to the allocation of primary lines and substations is consistent with its position related to 4 kV transformers and all other assets: REACT urges the Commission to direct ComEd to study the distribution system assets used to provide service to the over-10 MW customer classes; in the absence of such a study, those classes should not be assigned any more than a system-average rate increase. (*See* REACT Initial Brief at 42-44.)

The positions taken by IIEC and Staff regarding single-phase assets further highlight the benefits of REACT's proposal. On the one hand, IIEC appears to argue that single-phase assets are simply inadequate to provide Standard Service to the over-10 MW customer classes, and recommends that single-phase assets be entirely excluded from the assets assigned to the over-10 MW customer classes. (*See* IIEC Initial Brief at 46-48.) On the other hand, Staff, resists automatic, full exclusion of single-phase assets, suggesting that some of these assets may be properly assigned to the over-10 MW customer class. (*See* Staff Initial Brief at 96-97.) In each instance, the argument of IIEC and Staff lack the hard evidence regarding which assets, in fact, are used to provide service to the over-10 MW customer classes. REACT's proposed statistically valid sampling survey and analysis of distribution system assets would identify the costs caused by the customer classes. As ComEd recognized, such a survey might lead to costs being subtracted or added to the costs that are assigned to those classes under ComEd's flawed ECOSS. (*See* Tr. 2208:6-2209:8.)

#### h. Allocation of Illinois Electricity Distribution Tax

In its Initial Brief, REACT explained that the current method of collection of the IEDT is proper and should be retained. (*See* REACT Initial Brief at 44-46.) In so doing, REACT cited with approval the testimony of IIEC witness Mr. Stephens, whose testimony on the history and purpose of the Illinois Electricity Distribution Tax ("IEDT") supported REACT's position. IIEC appropriately expands and adds further texture to Mr. Stephens's discussion, particularly identifying the cost drivers of the IEDT. (*See* IIEC Initial Brief at 53-57.)

IIEC's thorough and persuasive analysis shows that (1) charging IEDT as part of the distribution facilities charge is most reflective of IEDT's continuing existence as a mostly-fixed cost; and (2) the fact that 10% of IEDT is driven by volume is a insufficient and unpersuasive reason to change the way ComEd charges the IEDT. (*See id.*) ComEd asserts that IEDT collection is more appropriate as a per kWh charge, but provides neither a rebuttal to the history recited by Mr. Stephens, nor a persuasive reason why a volumetric charge is appropriate when the cost causation of IEDT is 90% related to fixed costs. (*See id*; ComEd Initial Brief at 121.)

In short, the weight of the evidence shows that the Commission should maintain the *status quo* for how ComEd charges customers for the Illinois Electricity Distribution Tax.

**j. Customer Care Cost Allocation**

As a threshold matter, ComEd and Staff seem to advocate a definition of Customer Care Costs that appears somewhat incomplete and potentially inconsistent with the definition that ComEd, REACT, and even Staff's own witness endorsed. ComEd suggests a return to considering Customer Care Costs as part of delivery service. (*See* ComEd Initial Brief at 125-126.) Staff stated, without citation, that "Customer care refers to various services provided by the Company to its customers that are complementary to the distribution ('delivery') of electricity." (Staff Initial Brief at 109.) This definition is potentially incomplete and is overly restrictive to the extent that it excludes supply-related costs from Customer Care Costs. Indeed, the testimony of the witnesses clearly confirms a broader definition.

ComEd and REACT agree that Customer Care Costs "are those costs [ComEd incurs] to provide customer service for its delivery **and supply** customers." (Tr. 1314:17-20 (emphasis added); *see* REACT Initial Brief Section VII.B; *see also* ComEd Ex. 19.0R, 5:112-6:121 ("Customer services encompasses nearly every aspect of a customer's direct interaction with ComEd.") Staff witness Mr. Rukosuev likewise testified that "Customer care costs are incurred to support both the distribution **and supply functions** and the issue here is how these costs are to be allocated between the two." (Staff Ex. 12.0, 24:570-25:572 (emphasis added).) At the hearing, Mr. Rukosuev agreed that Customer Care Costs "support both the distribution **and the supply** functions of ComEd." (Tr. 1183:20-1183:1 (emphasis added).) Accordingly, the record evidence shows that Customer Care Costs relate to both the delivery and supply functions. To the extent that ComEd or Staff attempt to classify Customer Care Costs as solely a delivery function, it violates these agreed principles. The question for the Commission then is how much of those Customer Care Costs are properly allocated to ComEd's supply function.

**(i) Allocation Study vs. Switching Study**

In its Initial Brief, REACT explained why the Allocation Study best reflects cost causation, while the Switching Study ended up at a result the Commission found to be implausible and inconsistent with the Act. In ComEd and Staff's respective Initial Briefs, each raises arguments in favor of the Switching Study. None has merit.

ComEd asserts that the Switching Study is not overly speculative in relying on customer switching scenarios involving customers switching at levels of 10% and 100%. (*See* ComEd Initial Brief at 123.) ComEd's position is contradicted by the evidence. Staff witness Mr. Rukosuev stated on cross-examination that "the 10 percent and 100 percent was also provided, and in my understanding it is a **speculative** future scenario." (Tr. 1190:15-17 (emphasis added).) In response to an ALJ question, he then reiterated that with respect to the 10% and 100% scenarios, "**you can certainly call it speculative because it does look at a future scenario, which might or might not happen**." (Tr. 1191:2-4 (emphasis added).) Similarly, ComEd's witness Mr. Donovan admitted the speculative nature of the 10% and 100% switching scenarios. (*See* Tr. 1334:2-1337:10; ComEd Ex. 72.0 at 2:31-33.)

REACT witness Mr. Merola firmly established the importance of the admittedly-speculative 10% and 100% switching scenarios in setting the avoided cost value. (*See* REACT Ex. 5.0, 9:179-12:234; ComEd Ex. 48.0, 5:102-107.) Even if one accepts an avoided cost methodology, it is mathematically impossible to say that avoided cost levels are not speculative when only future, admittedly speculative cost levels are being used to calculate what is avoided.

(*See* Tr. 1312:10-1314:8 (acknowledging need to allocate future speculative costs for Switching Study).) As ComEd freely acknowledges, it simply does not know what its Customer Care Costs will look like at 10% and 100% switching, much less when (if ever) those scenarios will occur. (Tr. 1335:9-1337:10.)

Similarly, ComEd's claim that "only the 1% results" of the Switching Study will be used is mathematically untrue. (ComEd Ex. 48.0, 5:108-110.) ComEd's speculation in its Switching Study regarding the costs that it would avoid at the 10% and 100% switching levels has an enormous impact on the outcome -- in fact, it is determinative of the results of the calculation of what costs can be "avoided." (*See* REACT Ex. 5.0 at 11:207-12:234.) Based on ComEd's admission of the speculative nature of its future cost estimates and the mathematical necessity to rely on those estimates to come up with a bottom-line number, the evidence shows that the Switching Study is highly speculative, because, as Staff witness Mr. Rukosuev stated, "it might or might not happen." (Tr. 1191:4.)

Staff argues that the Switching Study somehow recognizes that the cost of service for bundled and unbundled customers are even, and that ComEd is the default provider. (*See* Staff Initial Brief at 111; *see also* ComEd Initial Brief at 124 (making similar argument).) Staff witness Mr. Rukosuev justified that position by stating that: "The fact that ComEd's costs will increase under the 100% switching scenario further strengthens the argument that there is no justification to allocate costs away from the distribution function." (Staff Ex. 12.0, 30:705-07 (bundled and unbundled customers); *see also id.* at 31:729-732 (using similar justification for default provider argument).) However, Staff cannot know whether ComEd's Customer Care Costs for bundled and unbundled customers are identical without looking at the evidence in this proceeding, and the evidence demonstrates that they are not the same. (*See, e.g.*, ComEd Ex.

19.2; REACT Ex. 2.0; REACT Ex. 5.0) Of course, Mr. Rukosuev's analysis is subject to question given his candid admissions about the speculative nature of the Switching Study noted above. In any event, whether ComEd's costs change or stay the same in the event of additional switching has nothing to do with whether the costs were *caused* by the delivery function, i.e. whether those costs fit within the definition of "delivery services" in Section 16-102 of the Act and were incurred to support the delivery function. (*See* REACT Ex. 5.0, 13:252-264, 15:288-16:325.) Thus, the Switching Study is not in line with the Commission's efforts to have ComEd's rates accurately "assign costs to the cost causers." (*See e.g.* ICC Docket No. 08-0532, Final Order dated April 21, 2010 at 67; *see also* REACT Initial Brief at 47-48 (quoting the Act and Commission Orders).)

Furthermore, the position of ComEd and Staff appears to rests upon an assumption that the Commission has rejected. In support of the Switching Study, Staff criticizes the Allocation Study, stating: "Basically, the Allocation Study is based upon an assumption that it is appropriate to allocate costs between distribution and supply merely because it makes sense doing so, rather than following cost causation principles". (Staff Initial Brief at 111; *see* ComEd Initial Brief at 125.) Staff's point is somewhat unclear. However, to the extent that Staff is saying that the Allocation Study does not follow cost causation principles, that statement stands at odds with the Commission's statement in its Final Order in the Special Investigation Proceeding: "**If the Commission's goal is to assign costs to the cost causers, it is difficult to imagine that less than 1% of ComEd's customer care costs are caused by supply related matters**." (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67 (emphasis added).) That statement clearly conveys the Commission's skepticism about the Switching Study approach and the

Switching Study result. Staff's apparent contrary view fails to acknowledge or credit that Commission viewpoint.

ComEd incorrectly argues that Mr. Merola's treatment of metering costs is evidence in support of an avoided cost methodology. (*See* ComEd Initial Brief at 124-125.) Contrary to ComEd's assertion, Mr. Merola merely excluded metering costs entirely from his analysis; he did *not* apply an avoided cost methodology. It is undisputed that ComEd provides the same metering services regardless of whether or not the customer takes supply from ComEd; thus, while a portion of the metering costs could be allocated to supply, the RES then arguably would be obligated to reimburse ComEd for providing the supply-related metering costs. (*See* REACT Ex. 2.0 at 15:306-308.) The same is not true with the other Customer Care Costs -- for example, ComEd does not provide supply-related billing services for customers that do not take supply from ComEd, and ComEd does not provide payment processing for supply-related charges when the customer does not take supply from ComEd. (*Compare* REACT Ex. 2.0, 16:342-348; REACT Ex. 5.0 at 13:252-264 *with* ComEd Initial Brief at 125.) In other words, in determining in the first instance whether the costs associated with a particular customer care service should be allocated between delivery and supply it is appropriate to inquire whether ComEd or the RES provides the particular supply-related service when the customer takes supply from the RES. (*See* REACT Ex. 2.0, 16:342-348; REACT Ex. 5.0 at 13:252-264.) It was appropriate to exclude metering from the analysis because ComEd provides the supply-related metering service, but neither ComEd nor Staff can demonstrate this to be the case for other supply-related components of Customer Care Costs.

Staff further suggests that the Allocation Study somehow creates an unfair subsidy for customers that take supply from a supplier other than ComEd. (*See* Staff Initial Brief at 111-12.)

The evidentiary basis for that view is, like the Switching Study itself, highly speculative. Notably, Staff's Initial Brief does not actually explain any subsidy that would result from accurate allocation of Customer Care Costs under an Allocation Study approach. As Staff acknowledges, an Allocation Study is consistent with the basic allocation methodology that ComEd employs in the ECOSS. (*See id.* at 111.) Neither Staff nor ComEd provide any explanation for why Customer Care Costs are different or why those costs should be treated in a *sui generis* manner, while all other costs are allocated using an allocation approach. Thus, Staff's conclusory statement about some speculative, potential subsidy (based on Staff's preference for a Switching Study that Staff's witness Mr. Rukosuev candidly admitted is itself speculative) does not form a persuasive basis to reject the Allocation Study, particularly given the Commission's previously stated skepticism of the Switching Study approach.

Finally, Staff argues that using an embedded approach would set a potentially poor precedent for other Illinois utilities, but as Mr. Merola points out, the Commission should allocate costs based on causation -- as required by the Act -- on a case-by-case basis. Moreover, Staff has not identified any provision similar to Section 16-108(c) of the Act applicable to gas utilities; since ComEd's current approach does not accurately allocate costs, it is literally contrary to the provisions of the Act applicable to electric utilities for ComEd to perpetuate that approach, regardless of whether or how that decision might impact other Illinois utilities. ((*See* 220 IICS 5/16-108(c); c*ompare* Staff Initial Brief at 112 *with* REACT Ex. 5.0 at 14:266-286.)

The weight of the evidence before the Commission in this proceeding, buttressed by the plain meaning of the Act and the Commission's statements in prior proceedings, strongly supports the Allocation Study. Accordingly, REACT respectfully requests that the Commission adopt the Allocation Study, with the adjustments discussed below.

#### (ii) **Direct O&M Costs vs. Total Costs**

Staff forcefully and properly rejects ComEd's attempt only to allocate Direct O&M costs in ComEd's Customer Care Cost studies. (*See* Staff Initial Brief at 112-114.) As Staff best described ComEd's decision:

> In fact, ComEd's witness on the subject, Mr. Donovan, frankly admitted that customer care costs to be considered were made, apparently without explanation, by ComEd's Regulatory Department and without Mr. Donovan's input. (Tr., January 13, 2011, pp. 1322-1323.) **ComEd has not offered any persuasive reasons for limiting its analysis to only direct O&M costs, while REACT presents good reasons for including all associated customer care costs in the analysis. The weight of evidence clearly supports REACT's position on this issue**.

(*Id.* at 113-114 (emphasis added).) REACT agrees with Staff's analysis. Nothing in ComEd's Initial Brief provides any basis to exclude indirect O&M costs. Accordingly, the total Customer Care Costs that must be allocated are $434 million. (*See* REACT Initial Brief at 55.)

#### **(iii) Adjustment of Allocation Study Allocators**

Both ComEd and Staff disagree with REACT witness Mr. Merola's adjustments to the Allocation Study allocators. Mr. Merola started with ComEd's Allocators and the justifications ComEd used, and adjusted to the extent that there was evidence a different allocation would better reflect cost causation. (*See, e.g.,* REACT Ex. 2.0 at 25:532-26:558.) Mr. Merola only adjusted when available information made adjusting the allocator reasonable. (*See id.*) Given Mr. Merola's limited and record-based adjustments, it is little surprise that Mr. Merola's allocation is less than three percentage points higher than ComEd itself found in its Allocation Study, 20.9% to 18%. (*Compare* REACT Ex. 2.5C *with* ComEd Ex. 19.0R at 2:25-26.)

ComEd cites Mr. Merola's revisions to the amount he advocates should be allocated to supply in the successive proceedings where REACT disputed Customer Care Costs apparently trying to assert that he is unsure of the amount to be allocated. (*See* ComEd Initial Brief at 127.)

However, ComEd's point fails to recognize that Mr. Merola's allocations adjusted as ComEd provided more information in successive proceedings; as ComEd has provided further information, Mr. Merola has incorporated that additional data. Notably, ComEd was forced by the Commission to adjust its "difficult to imagine" study. (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67.) Of course, if Mr. Merola had not adjusted his allocators in light of that new information, ComEd no doubt would have criticized him as well. ComEd's criticisms about changes to Mr. Merola's allocators over several cases is ironic, to put it politely, in light of ComEd's presentation of the current case. Here, ComEd has presented at least eight versions of its ECOSS in a single proceeding. (*See* ComEd Exs. 15.1, 22.1, 51.1, 51.2, 51.3, 75.1, 75.2, and 75.3.) This proceeding is perhaps unprecedented in Commission history in terms of the shear number of changes in the proposals, data, and studies advocated and/or presented by the utility seeking a rate increase -- but, more to the point, shows that parties can and do adjust their analysis based on information presented. Based on that record, it is questionable, at best, for ComEd to criticize Mr. Merola's development of more precise allocators over the course of several cases, based on ComEd's provision of new information during those various cases. As explained in REACT's Initial Brief, Mr. Merola did support his allocator adjustments, including where he decided that the evidence (or lack thereof) showed that a 50-50 split is the most reasonable allocation. (*See* REACT Initial Brief at 56-59.) This is far different than an across-the-board allocation against which ComEd and Staff attempt to compare Mr. Merola's allocations. (*See* ComEd Initial Brief at 127-128; Staff Initial Brief at 114-116.)

Instead of accepting inaccurate characterizations of Mr. Merola's testimony, the Commission can review the actual support that Mr. Merola marshals for his adjustments. Those adjustments are supported by the record, with Mr. Merola explaining in detail why the assumptions he used are superior to ComEd's assumptions. (*See, e.g.*, REACT Ex. 5.0 at 20:408-21:431.)

The Commission should note that, in the end, Mr. Merola recommended that 20.9% of the Customer Care Costs should be allocated to supply, which is less than a three (3) percentage point increase in the allocation that results from ComEd's Allocation Study. (*Compare* REACT Ex. 2.5C *with* ComEd Ex. 19.0R at 2:24-26.) Thus, any suggestion that Mr. Merola's analysis and calculations are inaccurate or over reaching is belied by ComEd's own analysis.

As a result, REACT respectfully requests that the Commission adopt Mr. Merola's adjustments to ComEd's Allocation Study.

**k. Other Docket 08-0532 [Special Investigation Proceeding] Compliance Issues**

ComEd conceded in its Initial Brief that it did not comply with the Special Investigation Order. (ComEd Initial Brief at 156.) However, ComEd also asserts that the Commission should endorse ComEd's ECOSS, which ComEd filed (and clearly designed) before ComEd fully complied with the Special Investigation Order. (ComEd Initial Brief at 107.) In other words, ComEd suggests that it could have filed a Special Investigation Order-compliant ECOSS before it completed Special Investigation-required analysis. For example, ComEd's tortured interpretation suggests that ComEd could undertake a compliant primary/secondary study without following the Special Investigation Order's mandate for how to define "primary." (*Id.* at 108.) REACT respectfully suggests that ComEd thus openly admitted that it did not comply with Commission Orders by conceding that it did not consider all of the necessary information before it filed its proposed ECOSS.

### I. Other Issues

In its Initial Brief, REACT returned to a key question that if first asked in the 2007 ComEd Rate Case: what did the over-10 MW customers do to deserve a massive, unjustified rate increase? (*See* REACT Initial Brief at 61.) Since that question originally was asked, the Commission issued two Orders that were highly critical of ComEd's ECOSS as applied to these customers, but the question remains unanswered. (*See* REACT Initial Brief at 61-62.) Upon review of the other Initial Briefs in this matter, REACT's position remains unchanged. REACT stands on the arguments it presented in the corresponding section of its Initial Brief. REACT further refers to Sections VII.A, VII.D and VIII.C.10 of this Reply Brief.

### D. Rate Moderation[5]

In its Initial Brief, REACT explained that "rate moderation" is an inappropriate question when the underlying rates are not cost-based. (*See* REACT Initial Brief at 62-64.) Although ComEd, Staff, IIEC, CG, Metra, and CTA all set out positions regarding moving an additional 33% toward ComEd's ECOSS-based rates, only REACT and IIEC address the implications of movement toward a non-cost based ECOSS. As REACT established in its Initial Brief, ComEd's deeply flawed ECOSS inaccurately reflects the costs of serving ComEd's largest customers; as a result, REACT respectfully requested that the Commission limit the increases to ComEd's over-10 MW customer classes to a system average increase. (*See* REACT Initial Brief at 19, 28-31, 42.) REACT exposed both the engineering realities of the system and actual asset capacity data that established the disconnect between ComEd's ECOSS and cost causation. (*See Id.*) IIEC presents a well-founded argument that highlights the themes underlying REACT's argument. (*See* IIEC Initial Brief at 58.)

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[5] Some of the discussion regarding the high dollar impact was in the "Other Issues" Section of REACT's Pre-Hearing Memorandum.

IIEC presented compelling evidence that the Commission considered the "mitigation" plan -- at least for the over-10 MW customer classes -- as a limited increase, with the intention that ComEd would fix (or be compelled to fix) the flaws that the Commission itself identified and criticized. (*See* IIEC Initial Brief at 57-58; *see also* REACT Initial Brief at 11-14 (quoting Commission criticism).) IIEC accurately pointed out that the Commission must have intended for ComEd to present a fully compliant ECOSS in this proceeding, rather than phase-in charges moving these rates toward a flawed ECOSS. (*Compare* IIEC Initial Brief at 57-58 (discussing flawed ECOSS) *with id.* at 58-59 (discussing rate shock to Railroad Class).)

To the extent that ComEd, CG, and Staff have recommended increases for the over-10 MW customer classes toward cost of service reflected in a flawed ECOSS -- whether at or above the 33% increase toward an assumed ECOSS that reflects cost causation -- those recommendations should be rejected. As Staff, REACT, IIEC, Metra and CTA all have pointed out, ComEd's ECOSS is skewed, and does not reflect Commission Orders intended to result cost-based rates. (*See, e.g.*, Staff Initial Brief at 94-104; REACT Initial Brief at 11-14, 26-44; IIEC Initial Brief at 43-48; Metra Initial Brief at 7-10; CTA Initial Brief at 7-13.)

## VIII.

## RATE DESIGN

### A. Overview

In its Initial Brief, REACT established the problems of establishing a rate design based on a flawed ECOSS. (*See* REACT Initial Brief at 64-65.) As a threshold matter, the quality of any rate design is necessarily limited by the quality of the underlying cost of service study. According to the Act and clear Commission policy, the control measure of quality is how closely both the ECOSS and rate design match cost causation. (220 ILCS 5/16-108(c).) As described in detail above, Staff, IIEC, Metra, and CTA all confirm that ComEd's ECOSS remains fundamentally flawed because it is not reflective of cost causation.

### B. Uncontested Issues

In its Initial Brief, REACT pointed to the customer impacts explored in Section VII.B. (*See* Section VII.B *supra*.) Those impacts include:

- Under ComEd's "unmitigated" ECOSS, the largest over-10 MW customers would be subjected to rate increases of more than **171%** over the cost-based rates established in ComEd's 2005 Rate Case -- with dollar impacts exceeding **$3.8 million.** (*See* REACT Ex. 4.0 at 8:165-169.)

- Under a "mitigated" approach, ComEd proposes to increase the delivery charges to each member of the Extra Large Load customer class by **75.2%-84.3%** (depending on customer size), and every member of the over-10 MW High Voltage class by **29.0%-46.7%** (depending on customer size) over rates from the ComEd's 2005 Rate Case. (*See* REACT Initial Brief at 20.)

- Thus, even under a "mitigated" approach, ComEd proposes increases for the Extra Large Load customer class from over $220,000 to over $1.875 million per year per customer (depending on load size) and for over-10 MW High Voltage customers from nearly $40,000 to over $460,000 per customer per year (depending on load size) over the rates from ComEd's 2005 Rate Case. (*See* REACT Initial Brief at 20.)

Upon review of the other Initial Briefs in this matter, REACT's position remains unchanged. REACT stands on the arguments it presented in the corresponding section of its Initial Brief.

### C. Potentially Contested Issues

#### 3. Class Definitions

##### b. New Primary Voltage Delivery Class vs Primary Subclass Charges

In its Initial Brief, REACT referenced the arguments it set out in Section VII.C.1.a(ii). (*See* Section VII.C.1.a(ii) *supra*.) Upon review of the other Initial Briefs in this matter, REACT's position remains unchanged. REACT stands on the arguments it presented in the corresponding section of its Initial Brief.

#### 4. Non-Residential

##### (a) Movement Toward ECOSS Rates

###### (i) Extra Large Load and High Voltage Customer Classes

As REACT firmly established in its Initial Brief, further movement toward a flawed ECOSS is inappropriate. (*See* REACT Initial Brief at 62-64, 66-69.) IIEC provided a clear articulation of a similar argument. As IIEC explained, the Commission proffered two separate rationales for its "mitigation" plan in the 2007 ComEd Rate Case: (1) to avoid rate shock to the Railroad Class, and (2) to address severe doubts that the Commission had regarding ComEd's ECOSS. (*See* IIEC Initial Brief at 57-58, 67.) As IIEC summarized, "Because the Commission recognized the likelihood that ComEd's proposed cost of service for these classes was overstated, it was unwilling to move more rapidly toward the wrong end point." (*Id.* at 67 (citing 2007 ComEd Rate Case Final Order).) REACT fully agrees with IIEC's statement and discussion.

ComEd, CG, and Staff suggestions that the over-10 MW customer classes enjoy a "subsidy," suffer from a fundamental logical flaw; they all assume that ComEd's ECOSS accurately reflects ComEd's costs to serve. (*See* ComEd Initial Brief at 144-145; CG Initial Brief at 9-10; Staff Initial Brief at 133-136.) Their assumption is undoubtedly wrong. Even if the Commission had merely opened up the Special Investigation Proceeding to *investigate* the issues presented, it would show clear suspicion of ComEd's ECOSS and resulting rate design. However, the Commission's Final Order in the Special Investigation Proceeding went well beyond that and set out several clear and specific directives that ultimately ComEd failed to satisfy. (*See* Section VIII.C.10 *infra*.) Furthermore, as REACT detailed in its Initial Brief, both the 2007 Rate Case and Special Investigation Final Orders contained blunt criticisms of ComEd's ECOSS as applied to the over-10 MW customer classes. (*See* REACT Initial Brief at

11-14.)  Undeterred, ComEd still presented essentially the same fundamentally flawed ECOSS as its preferred rate design for those classes, and alternative ECOSSs that still fail to appropriately account for the actual costs caused by the over-10 MW customer classes because they fail to accurately identify the distribution system assets serving those classes.  (*See, e.g.*, REACT Initial Brief at 18-19; ComEd Ex. 15.0R at 1:20-2:24, 6:117-18.)  As a result, any suggested further movement of the over-10 MW customer classes toward any of the flawed ECOSSs proposed by ComEd contradicts the weight of the evidence and would constitute reversible error if accepted by the Commission.

Instead, REACT respectfully requests that the over-10 MW customer classes be assigned no more than a system-average increase.

**(b) Allocating Secondary Costs Among Customer Classes**

In its Initial Brief, REACT established that secondary costs, like all costs, should only be born by particular classes to the extent that those classes caused the costs.  (*See* REACT Initial Brief at 69-70.)  CG requested that ComEd remove secondary costs to over 400 kW customers in one of ComEd's exemplar ECOSSs, and ComEd complied.  (*See* CG Initial Brief at 11 (noting support for not allocating secondary assets to customers not taking service from secondary assets); ComEd Initial Brief at 138-139.)  Staff witness Mr. Lazare agreed with CG in pre-filed testimony.  (*See* Staff Ex. 26.0 at 14:305-330.)  Upon review of the other Initial Briefs in this matter, REACT's position remains unchanged.  REACT stands on the arguments it presented in the corresponding section of its Initial Brief, namely that each customer class should pay a fair share of the costs that the class causes -- no more, no less.  (*See* REACT Initial Brief at 69-70.)

**5. Collection of Illinois Electricity Distribution Tax**

Please see the discussion in Section VII.C.1.h *supra*.  As stated above, REACT respectfully requests that the Commission prevent ComEd from altering the *status quo* and prevent ComEd from collecting IEDT as a per kWh line item charge from the over-10 MW customer classes.

### 6. Distribution Loss Factors

REACT requested that the Commission take further oversight of ComEd's Distribution Loss Factor ("DLF") determination process by requiring yearly filings regarding ComEd's DLFs. (*See* REACT Initial Brief at 70-72.) Both ComEd and Staff concede that ComEd would benefit from more attention to its DLFs, but ComEd resists REACT's request for active, ongoing oversight. (*See* ComEd Initial Brief at 148-151; Staff Initial Brief at 144-145.) ComEd argued that REACT's proposal is expensive and will lead to "small changes in the values of the DLFs." (ComEd Initial Brief at 151.) As REACT detailed in its initial brief, however, even small increases in the DLF can have large consequences for high-volume energy users, because DLFs act essentially as a tax on purchased electricity. (*See* REACT Initial Brief at 70.)

More to the point, however, ComEd validates REACT's argument when ComEd acknowledges that more oversight will lead to "small changes in the values of the DLFs." REACT is concerned about the massive spike from the 2005 Rate Case to ComEd's initial proposed DLFs in the present case. (*See id.* at 70-72.) The increased oversight should prevent recurrence of almost-73% increases in DLFs for ComEd's largest customers, as would have been the case if the Commission adopted ComEd's original proposed DLFs in this case. (*See id.* at 71-72.)

REACT respectfully requests that the Commission approve ComEd's revised proposal for adjusting its DLFs and require ComEd to adjust the DLFs annually.

### 10. Docket 08-0532 Compliance Issues

In its Final Order from the Special Investigation Proceeding, the Commission set out a clear, straightforward task list for ComEd to complete for its next rate case. The Commission instructed ComEd to develop:

> 1) direct observation or sampling and estimation techniques of ComEd's system to develop more accurate and transparent differentiation of primary and secondary costs; 2) other utilities' methods of differentiating primary and secondary systems and costs; 3) function based definitions of service voltages for facilities other than the line transformers already addressed; 4) an analysis of which customer groups are served by which system service components; and 5) consideration of redefining rate classes on the basis of voltage or equipment usage to better reflect the cost of service.

(ICC Docket No. 08-0532, Final Order dated September 10, 2008, at 40.) Staff and IIEC have provided detailed and compelling narratives explaining ComEd's failure to address these issues.

A summary of thorough narratives provided by Staff and IIEC illustrates for the Commission (1) the ways in which ComEd has failed to comply with the Commission's Orders; and (2) the continued flaws in ComEd's ECOSSs. IIEC aptly summarized the situation:

> Because ComEd's ECOSS studies rely on the results of its [primary/secondary] analyses, errors in the [primary/secondary] analyses result in errors in the associated ECOSS studies and associated rate designs.

(IIEC Initial Brief at 43.)

Other pertinent points include the following:

- **Overall Compliance.** Simply put, Staff believes that the Commission should ignore ComEd's proposed ECOSS, because it did not comply with the Special Investigation Order. (Staff Initial Brief at 147-51.) Staff notes that ComEd did not attempt to comply with these five directives in its initial filing, (Staff Initial Brief at 95-96.) As discussed in Section VII.C.1.k *supra*, ComEd released its initial proposed ECOSS, in substantially the same form of its final proposed ECOSS, before it had even completed the required tasks.

- **Direct observation or sampling and estimation techniques of ComEd's system to develop more accurate and transparent differentiation of primary and secondary costs.** Staff makes a compelling case that ComEd could and should have directly observed (in the field) several types of assets, but that ComEd did not do so. (Staff Initial Brief at 97-101.) Staff further notes that although ComEd was directed to develop sampling techniques, the four circuit sample size was far too small to be instructive, especially without establishing that the four circuits are representative of ComEd's system. (Staff Initial Brief at 102.)

- **Other utilities' methods of differentiating primary and secondary systems and costs.** Staff notes that ComEd failed to look at underlying primary/secondary cost analyses presented by other utilities, and failed to account for how (if at all) ComEd's deficient survey was used in ComEd's own filing. (Staff Initial Brief at 103-04.) Staff found ComEd's look at other utilities' approaches to be so deficient that it requests the Commission direct ComEd to file a proper analysis with its next rate filing. (Staff Initial Brief at 103.)

- **Function based definitions of service voltages for facilities other than the line transformers already addressed.** IIEC notes that ComEd continued, in both of the primary/secondary analyses that it presented, to categorize the assets by voltage and not by function as explicitly required by the Commission. (IIEC Initial Brief at 43-45.) One example of this is single-phase wire, which does not support a primary function. (IIEC Initial Brief at 44, 46-48; *see also* REACT Ex. 6.0C, 13:283-289 (discussing lack of use of single-phase wire by over-10 MW customer classes).)

- **An analysis of which customer groups are served by which system service components.** IIEC notes that ComEd frequently has recognized that the customer classes should be maintained because of the different usage patterns of the different classes. (IIEC Initial Brief at 65-66.) This bolsters the point raised by REACT witness Mr. Terhune (and, similarly, IIEC witness Mr. Stowe and CG witness Mr. Baudino) that any ECOSS must recognize that certain classes make little (if any) use of certain assets. (*See, e.g.*, REACT Initial Brief at 32-36 (summarizing Mr. Terhune's position); IIEC Ex. 3.0 at 11:263-13:306; CG Ex. 1.0 at 19:342-351.) Although parties differ on the proper solution, there is substantial agreement that failing to reflect the assets used to provide service to a particular class or classes is a fatal flaw inherent in ComEd's ECOSS.

- **Consideration of redefining rate classes on the basis of voltage or equipment usage to better reflect the cost of service.** As IIEC succinctly points out "Plainly, a rate design that does not differentiate between primary and secondary customers' costs does not comply with the Commission's [Special Investigation Order] directives. ComEd's proposed rate design does not make such a differentiation. This failing must disqualify ComEd's proposed rate design." (IIEC Initial Brief at 63; *see id.* at 63-64.)

#### 11. Other Issues

In its Initial Brief, REACT set out certain issues regarding its Offer of Proof related to REACT witness Mr. Terhune's analysis of information that was turned over by ComEd during the course of the evidentiary hearings. (*See* REACT Initial Brief at 72-73.) This issue was not addressed by the other parties in their respective Initial Briefs. REACT's position remains unchanged. REACT stands on the arguments it presented in the corresponding section of its Initial Brief.

## XI. CONCLUSION

Nothing in the Initial Briefs from other parties has caused REACT to seek different relief. REACT respectfully reiterates its request that the Commission enter an Order that:

- **Increases the rates of the over-10 MW customer classes by no more than the system average.** ComEd's proposed allocations for primary line and primary transformers do not reflect cost causation by the over-10 MW customer classes. In particular, the over-10 MW customer classes' extremely low use of single-/two-phase primary distribution line and 4 kV transformers is not appropriately reflected in ComEd's proposed allocation. Until the Commission has a full opportunity to hear testimony on adjusting allocators related to primary line and primary transformers, the Commission should restrict any increases to the currently over-allocated over-10 MW classes to the system average. This approach is consistent with the Commission's Final Order in the 2007 Rate Case for the customers as well as the approach that the Commission endorsed in the 2001 Rate Case for the non-residential customer classes. As described in REACT's Initial Brief, restricting the increase to system average is especially important given the massive, unjustified increases that ComEd sought to impose in the 2007 Rate Case and continues to attempt to impose under its inappropriately named "mitigation plan."

- **Orders ComEd to undertake a study of the distribution system assets serving the over-10 MW customer classes.** The Commission should build on its strong commitment to cost causation principles from the 2007 Rate Case and Special Investigation Proceeding Final Orders and require ComEd to undertake a study of the distribution system assets that provide service to the over-10 MW customer classes. REACT established that: (1) there is a disconnect between ComEd's current allocations and cost causation based on actual usage information from ComEd in this case; (2) ComEd has the ability to undertake the study (as evidenced by ComEd's primary/secondary study) ComEd's arguments as to why it should not undertake this study were rejected by the Commission when offered with regard to the primary/secondary split and are without merit.

- **Adopts the Allocation Study, with the revisions proposed by Mr. Merola, to allocate Customer Care Costs between the supply and delivery functions.** Now that the Commission can fully compare the embedded and avoided cost allocations side-by-side, REACT demonstrated that the embedded ("Allocation Study") approach best reflects cost causation. REACT also has shown that ComEd should have included indirect O&M and capital costs in its Allocation Study. Finally, REACT witness Mr. Merola provided several adjustments to the Allocation Study that would enhanced the study's reflection of cost causation.

- **Retains the *status quo* for how ComEd charges customers for the Illinois Electricity Distribution Tax.** REACT showed that there is no valid reason for ComEd to change its approach, but there are significant harms and a lack of cost causation support for changing to a per kWh flat rate.

- **Requires ComEd to update the Commission on its Distribution Loss Factor and underlying study annually.** Although REACT does not contest ComEd's ultimate Distribution Loss Factors ("DLFs") or underlying study, REACT demonstrates the alarming swings in DLFs since the 2005 Rate Case -- and even between the initial filing and later filings in the present case. Although REACT understands that DLFs can and do fluctuate, the enormous fluctuations reflected in ComEd's adjustments demonstrate the need for greater Commission monitoring and oversight. REACT establishes that the Commission should monitor DLFs on a yearly basis in order to avoid enormous fluctuations.

Thus, for the reasons stated herein and in its Initial Brief, REACT respectfully requests that the Commission enter an Order:

1. Rejecting ComEd's latest unjustified, disproportionate request for rate increases to ComEd's over-10 MW customer classes, and assign, at most, the system-average rate increase to those customer classes;

2. Putting an end to ComEd's practice of allocating costs to the over-10 MW customer classes that they did not cause, by ordering a study of distribution system assets serving these classes, from which ComEd can design cost based rates compliant with the Act;

3. Directing ComEd to use the Allocation Study with Mr. Merola's proposed adjustments to the cost allocators, to allocate ComEd's Customer Care Costs;

4. Denying ComEd's request to alter the way it charges its customers for the Illinois Electricity Distribution Tax;

5. Requiring ComEd to update its distribution loss factor annually; and

6. Granting any additional relief that the Commission determines to be in the interests of justice.

Respectfully submitted,

**THE COALITION TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER**

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